IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 243 of 1993

in

SPECIAL CIVIL APPLICATION No 3818 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHBHAI BHIMJIBHAI VADHER

Versus

STATE OF GUJARAT

Appearance:

MR MN DEVNANI for MR BN KESHWANI for Appellants
MR UA TRIVEDI, AGP for Respondent No. 1
NOTICE SERVED for Respondent Nos. 2 and 3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 12/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. This appeal under Clause 15 of the Letters Patent is directed against the judgment and order of the learned Single Judge dated 21st July, 1992 dismissing the Special Civil Application No.3818 of 1992 filed by the appellants.

2. In the said petition, the appellants had made the following prayers in paras 10(A) and 10(B):-

"(A) That this Hon'ble High Court may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction under Article-226 of the Constitution of India directing the respondents, their servants, agents including the officers both of Motor Vehicles Department and the Police Department not to seize the detain the petitioners' vehicles under Section-207 of the Motor Vehicles Act, 1988 solely on the ground that:-

(a) the passengers have paid fare individually for their travel and that hence the vehicle is used as a stage carriage, or on the ground that;

(ii) the passengers do not know each other and do not form a group, or on the ground that;

(iii) the passengers are travelling for different purposes, or on the ground that;

(iv) the passengers wee not picked up from the home state/town or on the ground that;

(v) the passengers would not perform return journey by the same omni bus.

when otherwise these vehicles are actually covered by Contract Carriage permits as well as Tourist Vehicle permits held by the petitioners.

(B) A writ of mandamus or a writ in the nature of mandamus or any other writ, order or directions may be issued directing the

respondents, their agents and servants not to keep the passengers out of such vehicles of the petitioners described in Clause-(A) of this para, and not to seize or detain the vehicles of the petitioners etc."

3. The learned Single Judge has dismissed the petition.

4. The learned AGP who appears for the respondents has submitted that the prayers made in the petition cannot be granted in view of the decision of the Supreme Court in Nirmala Jagdishchandra Kabra vs. Transport Commissioner and Others {(1997) 9 Supreme Court Cases 227}. In the said case, a writ petition, in which a similar prayer was made, was dismissed by a learned Single Judge of this court and the appeal was dismissed by the Division Bench. The Apex Court dismissed the appeal holding that in the circumstances the vehicle was used as a stage carriage and the authority rightly detained the vehicle for contravention of the conditions of the permit. It was held that the statutory power given to the authorised officer under Section 207 of the Motor Vehicles Act is to ensure compliance of the provisions of the Act and therefore, the mandamus sought for cannot be issued. Thus, it is clear that in view of this decision of the Supreme Court, prayers made in the petition by the appellants cannot be granted. There is no merit or substance in this Appeal and the same is dismissed with no order as to costs.

(R.K. Abichandani, J.)

(M.C. Patel, J.)

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